Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Construction Requirements For Commercial	)	PR Docket No. 93-144
Wide-Area 800 MHz Licensees	)	
Pursuant To Fresno Mobile Radio v. FCC	)	

To: Thomas Sugrue, Chief
Wireless Telecommunications Bureau

COMMENTS

Mobile Relays, Inc. ("Mobile Relays"), through counsel, hereby respectfully files its Comments in response to the Public Notice issued by the Commission on May 21, 1999 in the above-referenced matter.[1]

I. BACKGROUND

Mobile Relays is the operator of an extensive 800 MHz system in the South, Texas area. Mobile Relays requested and was granted "wide-area authority" under the Commission's previous rules. Mobile Relays request for "rejustification" was subsequently granted by the Commission. [2]

On February 5, 1999, the United States Court of Appeals for the District of Columbia Circuit remanded to the Commission for further analysis the Commission decision to adopt construction requirements for Economic Area ("EA") 800 MHz licensees which differ from those construction

[1]DA 99-974, 64 FR 31532, (June 11, 1999). An extension of the filing deadline was issued on June 15, 1999 (DA 99-1168).

[2]Order, PR Docket No. 93-144, released May 20, 1997.

requirements for 800 MHz wide-area licensees such as Mobile Relays.[3] At the request of Mobile Relays, on April 15, 1999, the Wireless Telecommunications Bureau temporarily suspended the construction timetables for wide area licensees until such time as the Commission had the opportunity to review its decision regarding construction requirements.[4]

It was the contention of Southern Company ("Southern") that the Commission treated wide-area licensees differently, and unfairly, in adopting a geographic construction requirement for EA licensees but retaining a site-by-site construction requirement for wide-area licensees. The Court of Appeals held that the Commission's explanation for this disparate treatment did not bear scrutiny.[5] The Court did not, however, rule on whether the distinction was permissible, only that the Commission had failed to adequately justify the distinction.

II. COMMENTS

Initially, Mobile Relays believes that it is important to distinguish between the 800 MHz SMR Pool channels and the 800 MHz Business and Industrial/Land Transportation Pools ("B/LT") licensed to wide-area systems. The Commission created new allocation rules for SMR Pools frequencies, not B/LT frequencies. Any B/LT frequencies held by any auction winner are not held as the result of any auction, and must be constructed consistent with the licensee's pre-existing waiver. Further, it is important to note that any B/LT frequencies held by wide-area SMR licensees

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[3]Fresno Mobile Radio, Inc. v. Federal Communications Commission, 14 CR 1287 (1999).

[4]The Commission's Order did not distinguish between those wide-area licensees who had already passed their construction deadlines and those wide-area licensees with construction deadlines after April 15, 1999. Mobile Relays construction deadline was after April 15, 1999.

[5]Id.

are held pursuant to Section 90.621(f)(2) of the Commission's Rules, which specifies that the out-of-category licensee must operate by the rules applicable to the category to which the frequency is allocated.

Secondly, Mobile Relays believes that it vital to distinguish between those licensees who requested wide-area authorizations as part of a plan to convert and upgrade an existing, analog SMR system loaded with customers versus a company seeking to utilize new frequencies to provide service on frequencies where no service had been provided before. The distinction between these two types of systems is critical. The conversion of an existing system is far more difficult than constructing a system with previously unused frequencies. In the former case, the transition must be accomplished in a manner not to disturb the existing customer base.[6] This conversion of an operating system is no small task. It is an extremely difficult proposition to "breakdown" frequencies licensed at high power sites with customers into lower power, multiply-sited frequencies while maintaining service to customers.

The transition period has been made more difficult by the lack of equipment to implement advanced technology radio systems. Mobile Relays readily expected manufacturers of "LTR-format" equipment to deliver on promises to make advanced technology equipment available. However, the immense consolidation of the 800 MHz band has limited the ability of manufacturers

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[6]Nextel Communications has accomplished its transition by merely notifying their customers that on a certain specified date the existing service will be terminated, and the customer has the option of buying a new radio and obtaining service on the new system. Certainly, in some measure Nextel's significant size and its conversion of its system to a different type of service offering contributed to an ability to make this choice. However, most SMR operators do not enjoy the same option of being able to financially afford to lose a significant part of their customer base, with the hope of replacing that customer base after the conversion has been completed.

of any other than Motorola's iDEN equipment to perceive enough of an equipment market to make advanced technology 800 MHz equipment to be financially feasible and a top priority. Instead, much of the development has come in equipment geared for the 450 MHz band.

The construction build-out has also been complicated by the Commission's auction of 800 MHz "upper band" frequencies. It is difficult to justify the expenditures of millions of dollars of equipment and system implementation costs when it will be necessary to "re-tune" each and every user which has already had to survive one service transition (the conversion to a high technology system) and now must experience a second service interruption (from upper channels to lower channels). In addition, the uncertainty over what transition costs are reimbursable from the auction winner has made planning and system implementation that much more difficult.

The Commission must also distinguish between those wide-area licensees that consciously missed their construction deadlines without any construction prior to the Commission's April 15, 1999 Order and those companies which have made legitimate efforts to construct and requested relief immediately after the Court's remand. Wide-area licensees which have not performed any construction whatsoever should not now be afforded additional time to construct, and additional time to warehouse spectrum, as the result of the Court's remand. Clearly, no company failed to meet a wide-area construction deadline because of the difference between constructing each and every channel at each and every site it was licensed, versus achieving any kind of geographic or population coverage of the market. Certainly, no company can complain that there was insufficient time to construct some portion of the system, as every license was afforded at least three and a half years

to accomplish this task.[7]

The sole question which should be before the Commission at this time is whether wide-area licensees who have expended significant funds to construct their systems pursuant to their existing authorizations should now have an alternative standard by which to demonstrate their construction compliance. Mobile Relays supports permitting companies which have embarked upon construction of their wide-area system to retain authorization of each of their SMR Pool (only) frequencies provided one of two construction tests is met: (1) the original site-by-site, frequency-by-frequency construction requirement; or (2) a coverage demonstration similar to the EA coverage requirement. This second requirement will be difficult to demonstrate, because the area of operation is not defined by a geographic/political boundary, but rather by a mileage distance from each transmitter site. Therefore, Mobile Relays would recommend that the Commission require that the wide-area licensee demonstrate service is being provided to customers at each licensed transmitter site by at least two of the frequencies licensed as part of the wide-area system.[8] Any transmitter sites not so constructed should be eliminated as part of the authorization. This alternative should not apply to non-SMR Pool channels, or to wide-area licensees who have not already completed some level of construction prior to the system's construction deadline.

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[7]Of the wide-area system licenses which were successfully "rejustified," each license was initially granted before December, 1995, and each licensee was afforded a period of five years from grant date or two years from the date of the Commission's May 20, 1997 Order to construct, whichever was shorter. Therefore, the minimum construction period was three and a half years (December, 1995 until May, 1999).

[8]Two channels are necessary to construct a trunked radio system, which is the format for which is wide-area system is licensed.

III. CONCLUSION

WHEREFORE, the premises considered, Mobile Relays, Inc. requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

MOBILE RELAYS, INC.

By: _____
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